began soliciting signatures for a petition. As a result of this activity by the Petitioner, an Operations Supervisor for Disneyland had to divert a tram that picks up people in the fence-enclosed parking area and takes them to the ticket booth area to another area in order to unload its passengers. The tram has three cars and is capable of carrying approximately one hundred fifty (150) people.

The evidence further showed that the Petitioner was told several times by various Disneyland officials that he would not be allowed to engage in this type of activity on Disneyland property and he was requested to leave. The Petitioner refused all these requests and was cited by an Anaheim Police Officer for violation of Section 602, subdivision (j) of the California Penal Code.

There was also evidence at the trial that Petitioner had called the Director of Operations at Disneyland several days before the date the citation was issued to request permission to obtain signatures on a petition at Disneyland. While denying Petitioner's request, the Director of Operations suggested that the Petitioner's activity could be carried on outside the Disneyland property.

The judgment of the Trial Court was affirmed by the Appellate Department of the Superior Court of the State of California in and for the County of Orange.

QUESTION PRESENTED

The Respondent disagrees with the "Question Presented" by the Petitioner in his brief (see Argument I, infra). Respondent contends that the Petitioner's statement of the "Question Presented" is inaccurate and is not the real issue in the instant case.

The question presented here is whether the Petitioner's actions of entering the premises and interfering with a lawful business in violation of a valid State criminal statute were constitutionally protected.

ARGUMENTS

I

The "Question Presented" by the Petitioner in This Case is Inaccurate.

The public does *not* have unrestricted access to the parking lot, which is part of the Disneyland complex, as stated by Petitioner on pages 2 and 3 of his brief. The evidence presented by the Respondent at the Trial Court, which is part of the Settled and Engrossed Statement on Appeal, was that the public is invited onto the enclosed parking lot only if they are going into the entertainment area.

There was further evidence at the trial, also included in the Settled and Engrossed Statement on Appeal, that Disneyland is completely enclosed by a fence, including the parking area, that Disneyland patrons must pay to park their cars on the parking lot, and that each entrance to the parking lot, including the entrance for walking patrons, is posted with "No Trespassing" signs in clear view.

In a shopping center situation the public is invited to enter, to shop, or to just stroll if they desire; however, such entry is *not* conditioned upon any purchase. On the other hand, at Disneyland a purchase, i.e. payment to be admitted to the park area, is required as a condition of entry. Disneyland extends an invitation only to those

members of the public who desire to pay the price of admission, to view and lawfully participate in the entertainment facilities.

The fact that various terms are employed to describe the enterprise does not broaden either the nature of the invitation or the use to which the premises are put.

II

The Judgment Below Does Not Violate Petitioner's Constitutionally Protected Rights Under the First and Fourteenth Amendments.

The Petitioner's contention that his constitutional guarantees under the First and Fourteenth Amendments were denied and that the State's trespass law was used to stifle freedom of speech have no merit according to decided cases nor as a philosophical appeal. What Petitioner is attempting to do, in effect, is to cloak himself with immunity under the First and Fourteenth Amendments from the legal consequences for acts committed in violation of a valid criminal statute.

This Court has previously pointed out that the fundamental rights of the Bill of Rights are not absolute (*Kovacs v. Cooper*, 336 U.S. 77, *Beauharnais v. People of State of Illinois*, 343 U.S. 250). In *Breard v. Alexandria*, 341 U.S. 622, the Court states:

> "The First and Fourteenth Amendments have never been treated as absolutes. Freedom of speech or press does not mean that one can talk or distribute where, when and how one chooses. Rights other than those of the advocates are involved."

Respondent respectfully submits that the constitutional rights guaranteed by the First and Fourteenth Amendments are limited by the constitutional rights of others to acquire and possess property, an instance of which is the right to carry on a business in a lawful way. By entering and interfering with a lawful business of a privately-owned commercial enterprise under the guise of exercising his constitutional rights, Petitioner, in addition to violating a valid State criminal statute, was submerging the rights of another. Owners of property also have constitutional rights.

The essence of the opinions of the cases cited by Petitioner is that the exercise of First Amendment rights cannot be prohibited in shopping centers, company towns, bus terminals, railroad stations, public streets and places historically associated with the exercise of First Amendment rights. The Respondent contends that Disneyland does not fit the rubric of any of these cases. Disneyland premises cannot be construed as analogous to any of the areas mentioned in the cases cited.

In *Marsh v. Alabama*, 326 U.S. 501, the company town was found to have the attributes of a state-created municipality "freely accessible and open to the people in the area and those passing through", while in *Amalgamated Food Employees v. Logan Valley Plaza*, 391 U.S. 308, the shopping center was said to serve as the community business block or as mentioned in the *Diamond v. Bland* case, 3C. 3d 653, "Indeed, in many instances the contemporary shopping center serves as the analogue of the traditional town square."

The premises of Disneyland serve neither as a business district for the surrounding residential communities nor as the "analogue of the traditional town square." In *Amalgamated Food Employees v. Logan Valley Plaza*, supra, at page 614, it was stated ". . . it is clear that the public has virtually unrestricted access to the property at issue here." This is not true in the instant case. Because of the nature of the particular use and the extent of the invitation involved, the premises in the instant case do not have the attributes akin to those of the property in the *Marsh*, *Logan Valley*, or other cases cited by Petitioner.

The State Appellate Court considered the cases cited by Petitioner in rendering its decision to affirm the judgment of the trial court. This Court has previously held that a criminal prosecution approved by the State should not be set aside as violative of due process without clear proof that such drastic action is required to protect constitutional rights (*Gallegos v. State of Nebraska*, 72 S. Ct. 141). Respondent contends that the petition should be denied because there has been no showing by Petitioner that his constitutional rights have been denied.

III

The Probative Force or Weight and Sufficiency of the Evidence Is Not Ordinarily Reviewable on Certiorari.

Petitioner argues in his "Statement of the Case" on pages 5 and 6, footnote 1, that Petitioner's obstruction was not the basis for the conviction or the affirmance by the Appellate Court. It appears that Petitioner is asking this Honorable Court to review the weight and sufficiency

of the evidence. In *Norton Company v. Department of Revenue of the State of Illinois,* 340 U.S. 534, this Court stated:

> "Of course, in constitutional cases, we have power to examine the whole record to arrive at an independent judgment as to whether constitutional rights have been invaded, but that does not mean that we will re-examine, as a court of first instance, findings of fact supported by substantial evidence."

This Court has always accorded great respect to the conclusions of the State Judiciary *(Akins v. State of Texas,* 325 U.S. 398). The Petitioner had ample opportunity to confront and cross-examine the witnesses against him at the trial level. Based on all the evidence, the Trial Court found the Petitioner guilty beyond a reasonable doubt. After submission of briefs and oral argument, the Appellate Department of the Superior Court of the State of California for the County of Orange affirmed that judgment.

IV

The Judgment Below Is Not Contrary to Applicable Decisions of This Court.

The Petitioner contends that "this Court has placed the First Amendment above technicalities regarding 'title'." The fallacy of Petitioner's view is that it implies that First Amendment rights are absolute and that all activities and conduct are sanctioned no matter what form they take or where they take place as long as they are done under the cover of the First Amendment. Re-

spondent submits that the privileges guaranteed by the First Amendment do not confer on one individual the right to use the privileges to the injury of another.

The parking area of Disneyland is an integral part of the entire complex and in no way does it resemble the streets, sidewalks, and malls of *Marsh* and *Logan Valley*.

Most of the same cases cited by Petitioner here were cited in the Court below. These cases were carefully considered and followed in rendering the judgment. The decision below turns upon its own facts. There is no conflict of decisions.

Conclusion.

Petitioner was convicted of trespass, a misdemeanor, after a sober, careful and eminently fair trial on the basis of evidence clearly establishing his guilt beyond a reasonable doubt. After submission of the briefs and oral arguments, the conviction was affirmed by the Appellate Department of the California Superior Court. The decision does not require further review.

The Respondent respectfully submits that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

Alan R. Watts

Assistant City Attorney

106 North Claudina Street
Suite 607
Anaheim, California 92805

Attorney For Respondent

CERTIFICATE OF SERVICE

I, ALAN R. WATTS, declare as follows:

I am an Attorney at Law duly admitted to practice before the Supreme Court of the United States, and I am the Attorney for Respondent, People of the State of California, with respect to the accompanying Brief in Opposition to the Petition for Writ of Certiorari.

On October , 1971, pursuant to Rule 33 of the Supreme Court Rules, I caused the within Brief in Opposition to the Petition for Writ of Certiorari to be served on Petitioner, David Stephen Ball, through his attorney of record by placing three copies thereof enclosed in a sealed envelope with first-class postage thereon fully prepaid, in the United States Mail at Anaheim, California, addressed as follows:

Roger Jon Diamond
Attorney at Law
15415 Sunset Boulevard
Pacific Palisades, California 90272

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October , 1971, at Anaheim, California.

Alan R. Watts